

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. 2257/2007

% Judgment decided on: 12th November, 2010

M/S RUSHI INTERNATIONAL Petitioner
Through: Mr. O.P. Gulabani, Adv.

Versus

THE STATE (NCT OF DELHI) & ORS. Respondent
Through: Mr. M.P. Singh, APP

Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. Respondent no. 2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as "the N.I. Act") against the petitioner (accused no. 2 before the Trial Court) and one Ms. Daya Sharma, which is pending Trial.

2. Facts as alleged in the complaint are that the petitioner had been running a pharmaceutical company; whereas Respondent no. 2 was engaged in advertisement business. They had business dealings, inasmuch as certain advertisements were got published by the petitioner through respondent no. 2. A sum of ₹ 21,76,432/- was due and

payable by the petitioner to respondent no. 2 towards the advertisement charges. Till 2004, a sum of ₹ 3 lakhs had been paid. For remaining amount, nineteen post dated cheques had been issued by Ms. Daya Sharma (accused no.1) in order to clear the aforesaid liability of petitioner. On presentation, one such cheque bearing no. 905300 dated 30th November, 2005 for Rs. 1 lakh drawn on Indian Bank, New Patliputra Colony Branch, Patna, was returned dishonoured on 27th December, 2005 with the remarks “insufficient funds”. Cheque amount was not paid within the statutory period inspite of service of legal demand notice dated 27th January, 2006; hence, the complaint was filed.

3. After recording pre-summoning evidence, Metropolitan Magistrate vide order dated 15th April, 2006 has summoned the petitioner under Section 138 of the N.I. Act. Feeling aggrieved by this order petitioner has approached this Court by the present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing of complaint.

4. It is contended that the petitioner is not ‘drawer’ of the cheque. A complaint under Section 138 of the N.I. Act, upon dishonour of a cheque, can be maintained only against the ‘drawer’ and not any other person. Reliance has been placed on ***P.J. Agro Tech, Limited & Ors. Vs. Water Base Limited 2010 AIAR (Crl.) 743.***

5. I have perused the complaint filed by respondent no. 2

before the Trial Court. Bare perusal thereof clearly shows that the cheque had been issued by Ms. Daya Sharma and not by the petitioner. A perusal of cheque (Ex. CW1/C) also confirms this fact. Ms. Daya Sharma is 'drawer' of the cheque in question. As per the complaint, even no demand notice was served on the petitioner. In para 9 of the complaint it has been specifically mentioned that on receiving information about dishonourment of the cheque, legal demand notice was issued to Ms. Daya Sharma (accused no.1) through Registered A.D. post on 27th January, 2006. Thus, it is clear that Daya Sharma is 'drawer' of the cheque in question.

6. At this stage, relevant it would be to reproduce Section 138 of the N.I. Act, which reads as under :-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for ["a term which may extend to two year"], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the

bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. (b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, ["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and (c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability."

7. Bare perusal of the aforesaid provision clearly shows that in order to attract the ingredients thereof, a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque, which is dishonoured, would attract the provisions of Section 138 of the N.I. Act against the 'drawer' of the cheque. Accordingly, in my view, a complaint under Section 138 of the N.I. Act can be maintained only against the 'drawer' of the cheque and no one else even if such a cheque had been issued by the 'drawer' in discharge of liability of a third party. In such an eventuality such third party cannot be impleaded as an accused.

8. In P.J. Agro Tech (supra) in the similar facts, Supreme Court has held as under :-

“In the instant case, the cheque which had been dishonored may have been issued by the Respondent No. 11 for discharging the dues of the Appellant No. 1 Company and its Directors to the Respondent No. 1 Company and the Respondent Company may have a good case against the Appellant No. 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The Appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by the Respondent No. 11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.”

9. Since the petitioner is not ‘drawer’ of the cheque in question, he cannot be impleaded as an accused in a complaint under Section 138 of the N.I. Act nor could he be summoned by the Metropolitan Magistrate. Accordingly, impugned order as well as the complaint qua the petitioner is quashed.

10. Petition is disposed of in the above terms.

A.K. PATHAK, J.

NOVEMBER 12, 2010

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